

## NEW RULE 1 TEMPORARY WATER QUALITY STANDARDS VARIANCES

(1) The department may issue a temporary variance from a water quality standard under the provisions of this rule and in conformance with 40 CFR 131.14.

(2) To obtain a variance, a permittee shall submit to the department an application that:

- (a) identifies the pollutant for which the variance is sought;
- (b) identifies the applicable variance factor(s) under 40 CFR 131.14(b)(2)(i)(A)(1);
- (c) identifies the permittee by name, address, and telephone number;
- (d) identifies the permitted activity;
- (e) identifies the receiving water body;
- (f) demonstrates to the department's satisfaction that the requirements of (1) are met;

(g) demonstrates that the variance will not result in a lowering of currently attained, ambient water quality;

(h) demonstrates that the permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is requested;

(i) demonstrates that a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is requested;

(j) includes an evaluation of facility operations and infrastructure to maximize pollutant reduction through an optimization study; and

(k) proposes, with supporting documentation, a variance level that is:

(i) the highest attainable interim standard in the receiving water body;

(ii) the interim effluent condition that reflects the greatest pollutant reduction achievable; or

(iii) if no additional feasible pollutant control technology can be identified, the interim standard or effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the variance is submitted. For a variance under this paragraph (2)(k)(iii), the permittee shall prepare and implement a pollutant minimization plan that contains a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

(3) The department shall review each application to determine whether a reasonable alternative is in place that would eliminate the need for the variance, including:

(a) a permit compliance schedule;

(b) reuse, trading, recharge, or land application;

(c) a TMDL for the pollutant where the permittee is meeting the established waste load allocation; or

(d) other department or permittee actions.

(4) If the department makes a preliminary finding that a reasonable alternative to approving a variance is available, the department shall consult with the applicant prior to making a decision regarding the variance.

(5) If the department determines that no reasonable alternative to a variance exists, the department shall determine whether the information provided by the applicant meets the requirements of (1) and (2). If the department finds that the requirements of (1) and (2) are met, and that a variance is needed, the department shall approve the variance after conducting a hearing following no less than 45 days' notice to the public. All written

or oral public comments related to the variance shall be presented to the department during this public comment period.

(a) The approved variance shall require the implementation of optimization study actions identified in (2)(j) as terms and conditions of the MPDES discharge permit.

(6) Within 30 days after approval of the variance, the department shall submit the variance and any supporting documentation and analysis to EPA. The variance is not approved for federal Clean Water Act purposes until EPA notifies the department that the variance complies with the federal Clean Water Act, 33 USC 1251, et seq.

(7) The variance may be used to develop MPDES permit limits. A permit incorporating a variance issued by the department under this rule is subject to ARM Title 17, chapter 30, subchapter 13.

(8) A variance must be reviewed by the department every five years to reevaluate the conditions in (2)(k). Based on this review, the department may terminate, continue, or modify the variance. To continue or modify the variance, the permittee shall provide information demonstrating compliance with (1) and (2).

(9) Based on the review conducted under (8), the department may approve the variance, with any modifications after public comment and public hearing under (5). Within 30 days after department approval of the variance, the department shall submit the variance and any supporting analysis to EPA. The variance is not approved for federal Clean Water Act purposes until EPA notifies the department that the variance complies with the federal Clean Water Act, 33 USC 1251, et seq.

(10) The department may decide of its own volition to issue a temporary water quality standards variance that is applicable to individual or multiple dischargers, pursuant to the procedures and requirements of this section.

(11) The department adopts and incorporates by reference 40 CFR 131.14 (July 1, 2021).

(12) A copy of 40 CFR 131.14 may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59601-0901.